Patent
Attorney's Docket No. 1005618-000007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of Joseph Bishop Application No.: 10/824,148 Filed: April 14, 2004 For: LOADING SUPPORT STRUCTURE FOR PATIENT TRANSPORT CART	**Mail Stop APPEAL BRIEF - PATENTS** Group Art Unit: 3673 Examiner: FREDRICK C. CONLEY Confirmation No.: 6376

REPLY TO NOTIFICATION OF NON-COMPLIANT BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Notification of Non-Compliant Appeal Brief dated May 14, 2009, a Substitute Appeal Brief is being submitted herewith.

In the Substitute Appeal Brief, the Claims Appendix has been revised so that the claims presented therein correspond to those pending in the application on the date of the final Office Action mailed October 18, 2005. In addition, the Argument section of the Brief has been revised to conform with the claims appearing in the Appendix. Other non-substantive revisions of an editorial nature have been made to Section V of the Brief.

It is respectfully submitted that the Substitute Appeal Brief complies with the requirements of 37 C.F.R. §41.37, and substantive consideration thereof is respectfully requested.

Respectfully submitted,

Buchanan Ingersoll & Rooney pc

Date: June 15, 2009

By: /James A. LaBarre/
James A. LaBarre
Registration No. 28632

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620

Patent
Attorney's Docket No. 1005618-000007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of	
Joseph Bishop	Group Art Unit: 3673
Application No.: 10/824,148	Examiner: FREDRICK C. CONLEY
Filed: April 14, 2004	Confirmation No.: 6376
For: LOADING SUPPORT STRUCTURE FOR PATIENT TRANSPORT CART	

SUBSTITUTE APPEAL BRIEF

Mail Stop APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This appeal is from the decision of the Primary Examiner dated October 18, 2005, finally rejecting Claims 1-13, 15-17, 19 and 20, which are reproduced as an Appendix to this brief.

I. Real Party in Interest

The real party in interest with respect to this application is Tactical Medical Equipment Corp, the assignee of record in this application by virtue of the Assignment submitted on April 14, 2004.

II. Related Appeals and Interferences

There are no other prior or pending appeals, interferences or judicial proceedings known to the Appellant, the Appellant's legal representative, or the assignee, which may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in this pending appeal.

III. Status of the Claims

The claims currently pending in this application are 1-20, with Claims 1, 14, 15 and 18 being independent. Claims 14 and 18 are allowed. Thus, only Claims 1-13, 15-17, 19 and 20 are at issue and being appealed. Specifically, Claims 1-8, 12, 15-17 and 19 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,662,388, hereinafter referred to as *Friel*. Claims 9-11, 13 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Friel* in view of U.S. Patent No. 2,127,309, hereinafter referred to as *Richard*.

It is those rejections that are requested to be reviewed.

IV. Status of Amendments

There were no amendments submitted subsequent to the final Office Action.

V. Summary of Claimed Subject Matter

Background

The appealed claims are generally directed to a patient support cart, *e.g.*, a stretcher, having a structure that supports one end of the cart while it is being loaded onto a raised platform, *e.g.*, the back end of an ambulance, from its other end. An example of a cart with such a support structure is illustrated in Figures 2A, 2B and 2C of the application.

One of the embodiments at issue is directed to a support structure for supporting a rear portion of a patient transport cart. A main body assembly comprises at least one vertical tubular member and has a top, bottom, and middle section. A wheel assembly comprises at least one wheel. The wheel assembly is attached to the bottom of the main body assembly by a wheel attaching means (Figure 2A, element 240), wherein the wheel assembly is oriented to rotate about a horizontal axis while supporting the main body assembly. An attaching means (Figures 3A, 3B, 4A, 4B, 4C; element 210) is for attaching the main body assembly to a member of the patient transport cart proximate to the rear portion of the patient transport cart. See paragraph [0026] of the present application.

Another of the embodiments at issue is directed to a patient transport cart having a support structure for supporting a rear portion of the patient transport cart. A main body assembly comprises at least one vertical tubular member and has a top, bottom and middle section. A wheel assembly comprises at least one wheel. The wheel assembly is attached to the bottom of the main body assembly by a wheel attaching means (Figure 2A, element 240). The wheel is oriented to rotate about a horizontal axis while supporting the main body assembly. An attaching means

(Figures 3A, 3B, 4A, 4B, 4C; 210) is for attaching the main body assembly to a member of the patient transport cart approximate to the rear portion of the patient transport cart. See paragraph [0026] of the present application.

A number of advantages are derived from the above-noted embodiments. For example, as described in paragraph [0006] of the present application, one of the problems with the prior art is that an EMT must support the weight at the back of the cart while the front is being supported by the ambulance bed when the cart is inserted into an ambulance.

Paragraph [0007] of the present application describes that the present embodiments support the rear of the cart while the cart is being guided into and/or is being withdrawn from the ambulance bed while the rear portion of the cart is not supported by the ambulance bed.

Independent Claim 1

A support structure for supporting a rear portion of the patient transport cart (200 in Figure 2A, paragraph [0026]), comprising:

a main body assembly (Figure 2A) comprising at least one vertical tubular member (220, 230 in Figure 2A) and having a top, bottom, and middle section (207, 206 and 208, respectively, in Figure 3A);

a wheel assembly comprising at least one wheel (see 200 and specifically 250 in Figure 2A), the wheel assembly attached to the bottom of the main body assembly by a wheel attaching means (240 shown in Figure 2A; paragraph [0026], lines 3-4), wherein the at least one wheel (250 in Figure 2A) is oriented to rotate about a horizontal axis while supporting the main body assembly; and

an attaching means (210 in Figures 3A, 3B, 4A, 4B, 4C; paragraph [0026], line 2; paragraph [0028], lines 7-12, and paragraph [0029]) for attaching the main body assembly to a member of the patient transport cart proximate to the rear portion of the patient transport cart.

Dependent Claim 2

The support structure of claim 1, wherein the main body attaching means (210 in Figures 3A, 3B, 4A, 4B, 4C; paragraph [0026], line 2; paragraph [0028], lines 7-12; and paragraph [0029]) comprises at least one support member (215 in Figure 3A) having first and second ends, the support member being attached to the main body assembly at the first end and having a mating portion (216 in Figure 3B) at the second end, wherein said mating portion is adapted to be inserted into a receiving means (310 in Figure 3B, paragraph [0028]; line 10, paragraph [0029]) attached to the member of the patient transport cart and be removably secured therein by a securing means of the mating portion (417 of Figure 4A; 421 of Figure 4B; paragraphs [0029-0030]).

Dependent Claim 3

The support structure of claim 2, wherein the main body attaching means (210 in Figures 3A, 3B, 4A, 4B, 4C; paragraph [0026], line 2; paragraph [0028], lines 7-12; and paragraph [0029]) comprises at least one support member (215 in Figure 3A) having first and second ends, the support member being attached to the main body assembly at the first end and having a mating portion at the second end (216 in Figure 3B; paragraph [0028], line 10; paragraph [0029]), wherein said mating portion is adapted to be inserted into a receiving means (310 in Figure 3B, paragraph [0028]; line 10, paragraph [0029]) attached to the member of the patient transport cart and be removably secured therein by a securing means of the mating portion (417 of Figure 4A; 421 of Figure 4B; paragraphs [0029-0030]).

Dependent Claim 4

The support structure of claim 3, wherein the main body attaching means (210 in Figures 3A, 3B, 4A, 4B, 4C; paragraph [0026], line 2; paragraph [0028], lines 7-12; and paragraph [0029]) comprises two diagonal support members (215 in Figure 3A; paragraph [0028], lines 6-8) each having the mating portion and being attached to the main body assembly (205 in Figures 3A and 3B) at the middle section.

Dependent Claim 5

The support structure of claim 3, wherein the securing means of the mating portion includes a spring loaded retractable button (417 of Figure 4A; paragraph [0029]).

Dependent Claim 6

The support structure of claim 3, wherein the securing means of the mating portion includes a removable pin (421 in Figure 4B; paragraph [0030]).

Dependent Claim 7 The support structure of claim 2, wherein the main body attaching means (210 in Figures 3A, 3B, 4A, 4B, 4C; paragraph [0026], line 2; paragraph [0028], lines 7-12; and paragraph [0029]) comprises at least one support member (215 in Figure 2A) having first and second ends, the support member being attached to the main body assembly at the first end and having clamping means (430, 431 in Figure 4C; paragraph [0031], lines 3-5) at the second end, wherein said clamping means are adapted to clamp on to the member of the patient transport cart and be removably secured thereto.

Dependent Claim 8 The support structure of claim 1, wherein the main body assembly (Figure 2A) comprises an upper member (220 in Figure 2A) and a lower member (230 in Figure 2A), said upper and lower members telescopingly cooperating under control of a height adjustment means (Figures 3A, 3B and 3C, *e.g.*, 270).

Dependent Claim 9

The support structure of claim 8, wherein the height adjustment means comprises a knob (270) connected to a threaded shaft (paragraph [0035], line 3; 360 and 370 in Figure 3C) adapted to thread through an interior of the upper member and apply force to the lower member, wherein turning the knob (270) threads the

threaded shaft through the interior of the upper member and applies the force to the lower member to thereby adjust a height of the support structure.

Dependent Claim 10

The support structure of claim 9, wherein the height adjustment means further comprises a crank handle (280 in Figure 3C; paragraph [0035], line 15)) attached to the knob (270).

Dependent Claim 11

The support structure of claim 8, wherein the height adjustment means comprises a ratcheting type height adjustment (paragraph [0036]).

Dependent Claim 12

The support structure of claim 1, wherein the wheel assembly (see 200 and specifically 250 in Figure 2A and specification) comprises two wheels (610 and 620 in Figure 6; paragraph [0037]) attached to each other via a common member (600), the common member being attached to the bottom of the main body assembly.

Dependent Claim 13

The support structure of claim 1, wherein the wheel assembly (see 200 and specifically 250 in Figure 2A) is rotatably connected to the bottom of the main body assembly (Figure 2A) through a swivel pin (630 in Figure 6; paragraph 0037, line 3), such that the wheel assembly rotates about a vertical axis (paragraph [0037], lines 3-6).

Independent Claim 15

A patient transport cart (Figure 2A) having a support structure for supporting a rear portion of the patient transport cart (200 in Figure 2A; paragraph [0026]), the support structure comprising:

a main body assembly (Figure 2A) comprising at least one vertical tubular member (220, 230 in Figure 2A) and having a top, bottom, and middle section (207, 207 and 208, respectively, in Figure 3A);

a wheel assembly comprising at least one wheel (see 200 and specifically 250 in Figure 2A), the wheel assembly attached to the bottom of the main body assembly by a wheel attaching means (240 shown in Figure 2A; paragraph [0026], lines 3-4), wherein the at least one wheel (250 in Figure 2A) is oriented to rotate about a horizontal axis while supporting the main body assembly; and

an attaching means (210 in Figures 3A, 3B, 4A, 4B, 4C; paragraph [0026], line 2; paragraph [0028], lines 7-12; paragraph [0029]) for attaching the main body assembly to a member of the patient transport cart proximate to the rear portion of the patient transport cart.

Dependent Claim 16

The support structure of claim 15, wherein the support structure is removably attachable by the main body attaching means (210 in Figure 2A; paragraph [0026], line 2).

Dependent Claim 17

The support structure of claim 16, wherein the main body attaching means (210 in Figure 2A) comprises at least one support member (215 in Figures 3A and 3B) having first and second ends, the support member being attached to the main body assembly at the first end and having a mating portion (216 in Figure 3B) at the second end, wherein said mating portion (216 in Figure 3B; paragraph [0028], line 9) is adapted to be inserted into a receiving means (310 in Figure 3B; paragraph [0028], line 10; paragraph [0029]) attached to the member of the patient transport cart and be removably secured therein by a securing means (417 of Figure 4A; 421 of Figure 4B; and paragraphs [0029-0030]) of the mating portion.

Dependent Claim 19

The support structure of claim 15, wherein the main body assembly (Figure 2A) comprises an upper member (220 in Figure 2A) and a lower member (230 in Figure 2A), said upper and lower members telescopingly cooperating under control of a height adjustment means (Figures 3A, 3B and 3C, *e.g.*, 270).

Dependent Claim 20

The support structure of claim 19, wherein the height adjustment means comprises a knob (270) connected to a threaded shaft (paragraph [0035], line 3; 360 and 370 in Figure 3C) adapted to thread through an interior of the upper member and apply force to the lower member, wherein turning the knob threads the threaded shaft through the interior of the upper member and applies the force to the lower member to thereby adjust a height of the support structure.

VI. Grounds of Rejection to be Reviewed

As noted earlier, Claims 1-8, 12 and 15-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,662,388, hereinafter referred to as *Friel*. Claims 9-11, 13 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Friel* in view of U.S. Patent No. 2,127,309, hereinafter referred to as *Rickard*.

Those rejections are to be reviewed.

A. U.S. Patent No. 6,662,388 (*Friel*)

Friel discloses a patient lifting device to impart a vertical and corresponding horizontal force component upon a load. Basically, as shown in Fig. 1 of *Friel*, the patient adjusting device 1 has a lifting mechanism 9 that is supported on the floor by wheels 2 and has a boom 20 on its top side 7. The patient adjusting device 1 is positioned at the rear of a patient's bed and a connecting element 35 extends from the boom 20 to a sheet 13 on which the patient rests. The boom 20 is raised and tension is applied to the connecting elements 35, thereby pulling the

sheet 13 and repositioning the patient toward the rear of the bed. That is, *Friel* refers to a device which is used to maneuver a bed-ridden patient into different positions while in a hospital bed, which is the object of *Friel's* invention. In contrast to the above noted subject matter of the present application, *Friel's* device is meant only for in-hospital use and in no way relates to supporting the weight at the end of a stretcher while the stretcher is being loaded into or being taken out of an ambulance. *Friel* discloses attaching chains to a sheet upon which a patient lies, and does not relate to supporting a patient transport cart

B. Rejections

Claims 1-8, 12 and 15-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated over *Freil*. Beginning on page 2, the Office Action states that *Friel* discloses all the features defined by Claims 1 and 15. Specifically, the Office Action states that:

> "Claims 1 and 15, Friel discloses a support structure, comprising:
> a main body assembly 9 comprising at least one vertical tubular member and having a top, bottom, and middle section defines a bore hole 18 extending throughout the middle of the tubular member,
> a wheel assembly comprising at least one wheel 2, the wheel assembly attached to the bottom of the main body assembly by a wheel attaching means, wherein the at least one wheel is oriented to rotate about a horizontal axis while supporting the main body assembly, and
> an attaching means (20, 31, 35)."

The Office Action goes on to state that:

> "With regards to the Applicant's recitation 'for supporting a rear portion of a patient transport cart' and 'for attaching the main body assembly to a member of the patient transport cart proximate to the rear portion of the patient transport cart' a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim the intended use must result in a manipulative difference as compared to the prior art."

Claims 9-11, 13 and 20 strand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over *Friel* in view of U.S. Patent No. 2,127,309, hereinafter referred to as *Rickard*.

The Office Action states:

> "[c]laims 9 and 20, Fried discloses all of the Applicant's claimed limitations except for the height adjusting means having a knob connected to a threaded shaft."

The Office Action relies on *Rickard* for a disclosure of that subject matter. Similar remarks are made with regard to Claims 10, 11 and 13.

VII. Argument

1. Rejection of Claims 1-8, 12 15-17 and 19 under 35 U.S.C. § 102(b) as being anticipated over *Freil*.

A. Rejection of Claim 1

The rejection is improper because the Examiner has incorrectly interpreted means plus function claim language to be "intended use" language and applied incorrect standards of patentability to reject the claims.

As noted above, Claim 1 recites in part: "an attaching means for attaching the main body assembly to a member of the patient cart proximate to the rear portion of the patient cart."

According to MPEP § 2181(I), "[a] claim limitation invokes 35 U.S.C. § 112, sixth paragraph if it meets the following 3-prong analysis: (A) the claim limitations use the phrase "means for" or "step for;" (B) the "means for" or "step for" is modified by functional language; and (C) the phrase "means for" or "step for" is not modified by sufficient structure, material or acts for achieving the specified function."

With regard to (A), Claim 1 recites "means for". With regard to (B), the "means for" language in Claim 1 is modified by functional language "attaching the main body to a member of a patient transport." With regard to (C), the language "means for" is not modified by structure, but only by the word "attaching", which is a description of an action. Therefore, the language at issue in Claim 1 is means plus function language and invokes the standards of 35 U.S.C. § 112, sixth paragraph.

According to the MPEP § 2181(II), "a claim limitation expressed in means-plus-function language "shall be construed to cover the corresponding structure…described in the specification and equivalents thereof.""

In the specification and drawings, descriptions of a patient transport cart are provided that differ significantly from any disclosure in *Freil*. For example, paragraph [0002] of the present application states that "[p]atient transport carts, also called

carts, are typically used for providing transport for a patient from a point of injury, *e.g.*, an accident scene, to an ambulance and again from the ambulance to a hospital bed." Notice how a patient transport cart is differentiated from a hospital bed. Further, paragraph [0022] states that "FIGs. 1A and 1B illustrate a conventional patient transport cart according to the prior art." Clearly, Figure 1A in the present application shows a cart with a bed and wheels for transporting patients.

In contrast to the present application, *Friel* discloses a patient lifting device to impart a vertical and corresponding horizontal force component upon a load. The patient adjusting device 1 has a lifting mechanism 9 that is supported on the floor by wheels 2 and has a boom 20 on its top side 7. The patient adjusting device is positioned at the rear of the patient's bed and a connecting element 35 extends from the boom 20 to a sheet 13 on which the patient rests. The boom 20 is raised and tension is applied to the connecting elements 35, thereby pulling the sheet 13 and repositioning the patient toward the rear of the bed.

In setting forth the rejection of Claim 1, the final Office Action cites *Friel*. The Examiner takes the position that *Friel* discloses each and every feature of Claim 1 because the recitation in Claim 1 that "an attaching means for attaching the main body assembly to a member of the patient transport cart approximate to the rear portion of the patient transport cart" is merely intended use language and that the device disclosed in *Friel* is capable of performing that intended use. The Office Action states on page 2, lines 21-24 that "a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the

prior art. If the prior art structure is capable of performing the intended use, then it meets the claim."

The Examiner's statement with regard to intended use language is not applicable to the means plus function language recited in Claim 1, which invokes different standards. The correct burden on the Examiner is not to show that the cited art could perform the intended use. Rather, he must cite a reference that shows each and every feature recited in Claim 1, namely that the reference performs the identical function specified in the claims, and does so with the corresponding structure described in the specification, or equivalents thereof (See MPEP 2182).

Therefore, the Examiner has applied incorrect standards for evaluating the patentability of Claim 1 and the rejection must be withdrawn.

Also, even if the correct standard is applied, Claim 1 is still allowable. First, the device of *Friel* does not perform the identical function recited in the claims, namely "attaching the main body assembly to a member of the patient transport cart proximate to the rear portion of the patient transport cart." Second, the device in *Friel* is not, and is not an equivalent to, a patient transport cart. Therefore, *Friel* does not disclose an attaching means for attaching a main body assembly to a member of a patient transport cart proximate to the rear portion of the patient transport cart, as recited in Claim 1 and described in the specification. For at least that reason too, the rejection of Claim 1 must be withdrawn.

B. Rejection of Claim 15

Claim 15 recites means plus function language similar to the language in Claim 1, and is allowable for similar reasons as discussed above in connection with similar language in Claim 1.

Moreover, Claim 15 positively recites a patient transport cart. Claim 15 recites in part "[a] patient transport cart having a support structure for supporting a rear portion of the patient transport cart" and "an attaching means for attaching the main body assembly to a member of the patient transport cart proximate to the rear portion of the patient transport cart."

The rejection of Claim 15 must be withdrawn at least because *Friel* does not disclose or suggest a patient transport cart. Rather, *Friel* only discloses a hospital bed, which is not a patient transport cart. Further, in setting forth the rejection of Claim 15, the Office Action does not even attempt to explain where or how *Friel* discloses or suggests a patient transport cart, as recited in Claim 15. Therefore, a proper rejection under 35 U.S.C. § 102(b) has not been set forth at least because *Friel* does not disclose a patient transport cart and the Office Action has not shown where or how each and every claimed feature is disclosed in *Friel*. For at least these additional reasons, the rejection of Claim 15 must be withdrawn.

C. Rejection of Dependent Claims 2 and 16

Claims 2 and 16 recite that the support structure is removably attachable by the main body attaching means.

The Examiner proposes that the chains 35 and sheet 13 disclose that claimed subject matter. However, as mentioned above, *Friel* does not disclose the means, or equivalents thereof, that are described in the present application. For at least that reason, the rejections of Claims 2 and 16 must be withdrawn.

D. Rejection of Dependent Claims 3 and 17

Claims 3 and 17 recite that the body attaching means comprises at least one support member having first and second ends, the support member being attached to the main body assembly at the first end and having a mating portion at the second end, wherein said mating portion is adapted to be inserted into a receiving means attached to the member of the patient transport cart and be removably secured therein by securing means of the mating portion.

The rejections of Claims 3 and 17 must be withdrawn because *Friel* does not disclose the means, or equivalents thereof, that are described in the present application. *Friel* instead discloses a chain 35 connecting to a sheet 13. Thus, *Friel* does not disclose the subject matter of Claim 3 and 17 and the rejection must be withdrawn.

E. Rejection of Dependent Claim 4

Claim 4 recites that the main body attaching means comprises two diagonal support members each having a mating portion being attached to the main body assembly at the middle section.

The Examiner proposes that the chains 35 in *Friel* serve as the support members, that the bore hole 18 serves as the claimed middle section, and that the

chains are attached at the bore holes 18. However, it is apparent from Figure 1 in *Friel* that the chains 35 are attached at the attachment points 31 on the attachment boom 20, and not at the bore hole 18. Further, the structure in *Friel* is not the same as the structure, or equivalents therefore, described in the specification, and therefore cannot disclose the claimed means. For at least those reasons, the rejection of Claim 4 must be withdrawn.

F. Rejection of Dependent Claim 5

Claim 5 defines that the securing means of the mating portion includes a spring loaded retractable button.

The final Office Action acknowledges that *Friel* does not disclose such, but states that "[t]he equivalency of buttons, pins, hooks, and clamps for providing a fastening means is well known and it would have been obvious for one having ordinary skill in the art at the time of the invention to employ a button, removable pin, or clamp in order to provide an alternate means for closure." However, the Examiner rejects Claim 5 under 35 U.S.C. § 102(b), which requires that each claimed feature be disclosed. Based on the Examiner's admission, it is not proper to reject Claim 5 under 35 U.S.C. § 102(b) in view of *Friel* because *Friel* does not disclose each and every feature. For at least those reasons, the rejection of Claim 5 must be withdrawn.

G. Rejection of Dependent Claim 6

Claim 6 defines that the securing means of the mating portion includes a removable pin.

The Office Action acknowledges that *Friel* does not disclose such, and states that "[t]he equivalency of buttons, pins, hooks, and clamps for providing a fastening means is well known and it would have been obvious for one having ordinary skill in the art at the time of the invention to employ a button, removable pin, or clamp in order to provide an alternate means for closure." However, the Examiner rejects Claim 6 under 35 U.S.C. § 102(b), which requires that each claimed feature be disclosed. Based on the Examiner's admission, it is not proper to reject Claim 6 under 35 U.S.C. § 102(b) in view of *Friel* because *Friel* does not disclose each and every feature. For at least those reasons, the rejection of Claim 6 must be withdrawn.

H. Rejection of Dependent Claim 7

Claim 7 defines in part that the support member is attached to the main body assembly at the first end and has clamping means at the second end, wherein the clamping means are adapted to clamp on to the member of the patient transport cart and be removably secured thereto.

The Office Action acknowledges that *Friel* does not disclose such, but states that "[t]he equivalency of buttons, pins, hooks, and clamps for providing a fastening means is well known and it would have been obvious for one having ordinary skill in the art at the time of the invention to employ a button, removable pin, or clamp in order to provide an alternate means for closure." However, the Examiner rejects Claim 7 under 35 U.S.C. § 102(b), which requires that each claimed feature be disclosed. Based on the Examiner's admission, it is not proper to reject Claim 7 under 35 U.S.C. § 102(b) in view of *Friel* because *Friel* does not disclose each and

every feature. For at least those reasons, the rejection of Claim 7 must be withdrawn.

I. Rejections of Claims 8, 12 and 19

The rejections of Claims 8, 12 and 19 stand and fall with the rejections of Claims 1 and 15 respectively.

2. The rejection of 9-11, 13 and 20 under 35 U.S.C. § 103(a) as being unpatentable over *Friel* in view of *Rickard*.

A. Rejections of Claims 9-11 and 20

Claims 9-11 and 20 depend from Claims 1 or 15, respectively. *Rickard* does not remedy the deficiencies of the rejections of Claims 1 and 15, as pointed out herein. The rejections of 9-11 and 20 are therefore deficient for at least the same reasons and must be withdrawn too. In essence, the rejections of Claims 9-11 and 20 stand or fall with the rejections of Claims 1 and 15.

Conclusion

For the reasons stated above, it is requested that all the rejections be withdrawn and that this application be allowed in a timely manner.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: June 15, 2009

By: /James A. LaBarre/
James A. LaBarre
Registration No. 28632

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620

CLAIMS APPENDIX

The Appealed Claims:

1. A support structure for supporting a rear portion of a patient transport cart, comprising:

a main body assembly comprising at least one vertical tubular member and having a top, bottom, and middle section;

a wheel assembly comprising at least one wheel, the wheel assembly attached to the bottom of the main body assembly by a wheel attaching means, wherein the at least one wheel is oriented to rotate about a horizontal axis while supporting the main body assembly; and

an attaching means for attaching the main body assembly to a member of the patient transport cart proximate to the rear portion of the patient transport cart.

2. The support structure of claim 1, wherein the support structure is removably attachable by the main body attaching means.

3. The support structure of claim 2, wherein the main body attaching means comprises at least one support member having first and second ends, the support member being attached to the main body assembly at the first end and having a mating portion at the second end, wherein said mating portion is adapted to be inserted into a receiving means attached to the member of the patient transport cart and be removably secured therein by a securing means of the mating portion.

4. The support structure of claim 3, wherein the main body attaching means comprises two diagonal support members each having the mating portion and being attached to the main body assembly at the middle section.

5. The support structure of claim 3, wherein the securing means of the mating portion includes a spring loaded retractable button.

6. The support structure of claim 3, wherein the securing means of the mating portion includes a removable pin.

7. The support structure of claim 2, wherein the main body attaching means comprises at least one support member having first and second ends, the support member being attached to the main body assembly at the first end and having clamping means at the second end, wherein said clamping means are adapted to clamp on to the member of the patient transport cart and be removably secured thereto.

8. The support structure of claim 1, wherein the main body assembly comprises an upper member and a lower member, said upper and lower members telescopingly cooperating under control of a height adjustment means.

9. The support structure of claim 8, wherein the height adjustment means comprises a knob connected to a threaded shaft adapted to thread through an interior of the upper member and apply force to the lower member, wherein turning

the knob threads the threaded shaft through the interior of the upper member and applies the force to the lower member to thereby adjust a height of the support structure.

10. The support structure of claim 9, wherein the height adjustment means further comprises a crank handle attached to the knob.

11. The support structure of claim 8, wherein the height adjustment means comprises a ratcheting type height adjustment.

12. The support structure of claim 1, wherein the wheel assembly comprises two wheels attached to each other via a common member, the common member being attached to the bottom of the main body assembly.

13. The support structure of claim 1, wherein the wheel assembly is rotatably connected to the bottom of the main body assembly through a swivel pin, such that the wheel assembly rotates about a vertical axis.

14. A support structure for supporting a rear portion of a patient transport cart, comprising:

a main body assembly comprising at least one vertical tubular member and having a top, bottom, and middle section;

a wheel assembly comprising at least one wheel, the wheel assembly attached to the bottom of the main body assembly by a wheel attaching means,

wherein the at least one wheel is oriented to rotate about a horizontal axis while supporting the main body assembly; and

an attaching means for attaching the main body assembly to a member of the patient transport cart proximate to the rear portion of the patient transport cart;

wherein the main body attaching means comprises a hinged connection between the main body assembly and the member of the patient transport cart, said hinged connection oriented such that the support structure can be folded forward from the vertical rear proximate position to a horizontal position adjacent to an underside of the patient transport cart.

15. A patient transport cart having a support structure for supporting a rear portion of the patient transport cart, the support structure comprising:

a main body assembly comprising at least one vertical tubular member and having a top, bottom, and middle section;

a wheel assembly comprising at least one wheel, the wheel assembly attached to the bottom of the main body assembly by a wheel attaching means, wherein the at least one wheel is oriented to rotate about a horizontal axis while supporting the main body assembly; and

an attaching means for attaching the main body assembly to a member of the patient transport cart proximate to the rear portion of the patient transport cart.

16. The support structure of claim 15, wherein the support structure is removably attachable by the main body attaching means.

17. The support structure of claim 16, wherein the main body attaching means comprises at least one support member having first and second ends, the support member being attached to the main body assembly at the first end and having a mating portion at the second end, wherein said mating portion is adapted to be inserted into a receiving means attached to the member of the patient transport cart and be removably secured therein by a securing means of the mating portion.

18. A patient transport cart having a support structure for supporting a rear portion of the patient transport cart, the support structure comprising:

a main body assembly comprising at least one vertical tubular member and having a top, bottom, and middle section;

a wheel assembly comprising at least one wheel, the wheel assembly attached to the bottom of the main body assembly by a wheel attaching means, wherein the at least one wheel is oriented to rotate about a horizontal axis while supporting the main body assembly; and

an attaching means for attaching the main body assembly to a member of the patient transport cart proximate to the rear portion of the patient transport cart;

wherein the main body attaching means comprises a hinged connection between the main body assembly and the member of the patient transport cart, said hinged connection oriented such that the support structure can be folded forward from the vertical rear proximate position to a horizontal position adjacent to an underside of the patient transport cart.

19. The support structure of claim 15, wherein the main body assembly comprises an upper member and a lower member, said upper and lower members telescopingly cooperating under control of a height adjustment means.

20. The support structure of claim 19, wherein the height adjustment means comprises a knob connected to a threaded shaft adapted to thread through an interior of the upper member and apply force to the lower member, wherein turning the knob threads the threaded shaft through the interior of the upper member and applies the force to the lower member to thereby adjust a height of the support structure.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None